

REMARKS

Prior to this Amendment D, claims 1, 6-14, 19-21, and 43-50 were pending. Applicants note that claims 1, 6-14, and 19-21 have been found to be in condition for allowance. Pursuant to the Examiner's suggestion and in accordance with 37 C.F.R. 1.126, claims 43-50 have been renumbered as claims 47-54. Applicants note that the Office has withdrawn the election of species requirement in the March 24, 2004 Office action. As such, Applicants are now entitled to examination of claims 23 and 24 as these claims are part of the Group I claims (1-24 and 43-46) originally selected by Applicants for examination but which did not read on the species requirement. Applicants have amended claim 23 to be similar to claim 1 and have canceled claim 24. No new matter has been added by these amendments. After entry of this Amendment D, claims 1, 6-14, 19-21, 23, and 47-54 will be pending. Applicants respectfully assert that all claims are in condition for allowance.

1. Objection of Claims 43-50

Reconsideration is requested of the objection of claims 43-50 as not being in accordance with 37 CFR 1.126, which requires the original numbering of the claims to be preserved throughout the prosecution. Pursuant to Examiner's suggestion, claims 43-50 have been renumbered as claims 47-54. As such, the objection should be withdrawn. No new matter has been added to the application by this amendment.

2. Rejection of Claims 43-50 Under 35 U.S.C. §112, First Paragraph

Reconsideration is requested of the rejection of claims 43-50 (claims 47-54 after correction) as failing to comply with the written description requirement under 35 U.S.C. §112, first

paragraph. The Office asserts that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Specifically, the Office asserts that there is no support for the limitation "kills no more than about 20% of the *Proteus mirabilis*."¹

Claim 43 (claim 47 after correction) is directed to an absorbent product comprising a carbohydrate-hydrogen peroxide mixture for reducing the amount of irritation on a wearer's skin caused by volatile organic compounds produced by *Proteus mirabilis*. The absorbent product is selected from the group consisting of diapers, training pants, adult incontinence garments, feminine napkins, tampons, and interlabial pads. The carbohydrate-hydrogen peroxide mixture, upon activation, kills no more than about 20% of the *Proteus mirabilis* that produce the volatile organic compounds.

M.P.E.P. 2163 states that the first paragraph of 35 U.S.C. 112 requires that the "specification shall contain a written description of the invention. To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention." The Federal Circuit has ruled that "an applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention." *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

¹Office action dated March 24, 2004 at page 3.

Support for the limitation of claim 43, requiring that the carbohydrate-hydrogen peroxide mixture "kills no more than about 20% of the *Proteus mirabilis*" can be found throughout the instant specification and examples. For example, on page 7, line 31 through page 8, line 6 of the instant specification, Applicants assert one advantage of the instant invention; that of minimizing or eliminating the metabolic compounds produced by bacteria, while not limiting the growth of or killing the bacteria present on and near the skin, mucosa, or within the body. Specifically, the specification states "[w]ith the compounds and products of the present invention, only a very small amount, if any, bacteria is actually killed as the compounds simply supply oxygen for use during metabolism which reduces the production of the unwanted metabolic byproducts."²

Additionally, Example 8 specifically tested various concentrations of mannitol peroxide and mannitol in the presence of aerobically cultivated *Proteus mirabilis*, urine and TSB to determine whether the mannitol peroxide or mannitol significantly impacted bacteria growth. As shown in Table 8 (found on page 24 of the instant specification), the mannitol peroxide utilized appears to have little effect on the growth of the bacteria, even at elevated concentrations. Almost all samples tested has substantially less than 20% killing of the bacteria. As such, the instant specification sufficiently supports the limitation of claim 43, that of requiring the carbohydrate-hydrogen peroxide mixture to "kill[] no more than about 20% of the *Proteus mirabilis*." This disclosure reasonably conveys to one skilled in the art that the Applicants, at the time the application was filed, had possession of the claimed invention.

²Specification at page 8, lines 3-6.

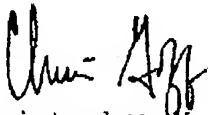
Claims 44-50 (claims 48-54 after correction) depend directly or indirectly from claim 43 and are patentable for the same reasons as claim 43 set forth above, as well as for the additional elements they require.

3. Patentability of Claim 23

Claim 23, as amended herein, is similar to claim 1 in that it requires a product comprising from about 0.01% (by weight of the product) to about 5% (by weight of the product) crystallized carbohydrate-hydrogen peroxide mixture for reducing the amount of irritation on a wearer's skin caused by microbial-produced volatile organic compounds. Claim 23 further requires the carbohydrate to be sorbitol. Applicants note that claim 1 has been found to be in condition for allowance. As such, claim 23, which is similar to claim 1, should also be found allowable for the same reasons as claim 1.

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment D to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,



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